

The complaint

Mr R complains that BMW FINANCIAL SERVICES (GB) LIMITED took the final payment of a hire purchase agreement without his authorisation after he'd applied to refinance the balance.

What happened

I issued a provisional decision setting out what I thought about Mr R's complaint. I've copied the relevant parts of that provisional decision below – and they form part of this final decision.

"In December 2020, Mr R was supplied with a car through a hire purchase agreement with BMW. The total amount of credit under the agreement was £22,028.67 to be repaid over 48 months; with 47 monthly payments of £253.41 followed by an optional final payment of £13,931.67 payable if Mr R chose to purchase the car.

In November 2024, Mr R contacted BMW as the agreement was nearing its end. He wanted to keep the car but didn't want to purchase it outright at that stage, so asked if he could refinance the final payment. BMW sent him a quote to refinance the balance of £13,931.67 over a period of 47 monthly payments of £167.76, followed by an optional final payment of £10,199.67 if he chose to purchase the car. The quote was dated 22 November 2024 and was valid until 22 December 2024. When sending the quote, BMW asked Mr R to call if he wanted to proceed with it.

On 3 December 2024 Mr R got back in touch to proceed with the new agreement. A week later, he discovered that the final payment of £13,931.67 had been taken from his account through the direct debit mandate in place for the original agreement. BMW apologised and said Mr R would need to contact his bank to reverse the payment. It confirmed with Mr R's bank that the funds could be returned.

In the meantime, Mr R submitted his application for the new finance agreement. On 27 December 2024 BMW wrote to Mr R saying that because he'd made the final payment due under the agreement, he no longer had any obligations under it. A few days later it said Mr R's application for a new finance agreement had been accepted. Mr R sold the car shortly after.

On 13 January 2025, Mr R's bank processed his indemnity claim and the £13,931.67 was returned to him. BMW contacted Mr R to ask how he intended to repay the funds. Mr R said he wasn't aware the funds had been returned, and that as far as he was concerned the agreement was settled when the direct debit was taken. He said he wasn't in a position to repay the funds in full, and as the car had been sold it wasn't possible to proceed with the refinancing arrangement he'd asked for.

Mr R made a complaint. He said BMW's decision to collect the funds despite his refinancing application caused him to go into an unarranged overdraft. He said this left him without funds which he needed to carry out essential works to a buy-to-let property, and the delay caused him to lose a tenant and cost him approximately £4,500 in rental payments. He understood

the funds would need to be repaid to BMW but didn't want the situation to impact his credit file.

BMW didn't respond to the complaint at the time, so it was referred to this service. One of our Investigators considered the complaint but didn't uphold it. They said Mr R's original agreement was due to end on 1 December 2024, and although he'd asked for a quote to refinance the final payment he didn't submit an application – so BMW didn't make an error by taking the payment by direct debit. Mr R disagreed and said he was told his application had been put through – and if there was an error in processing it that wasn't his fault. He was concerned BMW had started recording adverse information on his credit file. He said he was willing to work with BMW to come to a repayment arrangement – but expected a substantial amount to be waived in consideration of its errors. He asked that the complaint be referred to an Ombudsman for a final decision. So, it's been passed to me to decide.

After the complaint was referred to this service, BMW issued its response. In summary, it didn't agree it had made an error. But it did agree to enter further discussions about refinancing the balance. It also agreed to remove details of the arrears from Mr R's credit file if a refinancing application was successful. It apologised for the length of time taken for it to look into things and offered £250 to recognise this.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my decision on the balance of probabilities – what I think is more likely than not to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr R was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means I can consider a complaint about it.

I can appreciate it would have caused Mr R worry and confusion to discover that such a significant sum had been taken from his account without his knowledge. And, when those funds were later returned Mr R was unexpectedly left having to repay them. I've considered whether BMW made an error here and if so what the impact of that error was.

I've looked at Mr R's original agreement. This says the final payment of £13,931.67 will be due at the end of the agreement term, and will be collected one month after the last monthly payment is made unless Mr R returned the car. The term of the agreement was 48 months, and it was signed on 1 December 2020. So, the final payment was due to be collected on 1 December 2024. While it's not necessarily reasonable to assume a customer will remember these details several years after an agreement was signed, in this case Mr R contacted BMW to ask about refinancing the payment – so it appears he was aware that it would soon be due.

The final payment fell due on 1 December 2024 – but as this was a Sunday it was collected the following day. Mr R says he put through his refinancing application before that date, so the payment shouldn't have been collected. But from the contact notes I've seen, while Mr R asked for a quote on 22 November 2024, he got back in touch with BMW to proceed with it on 3 December 2024 – after the final payment had already been taken. So, the original

agreement was still in place at the time and the direct debit was taken in line with the terms of that agreement.

However, I think BMW ought to have done more to support Mr R here. Mr R told BMW over a week in advance of his agreement ending that he intended to refinance it – so it ought reasonably to have been aware that he didn't want – or wasn't in a position – to make the final payment in full. With this in mind it ought to have warned him that the direct debit was still due to be taken, and that although the quote was valid until 22 December 2024, the new agreement needed to be processed significantly earlier than that to avoid the funds being debited. Had he been aware of this, Mr R could have taken steps to return the application sooner – or cancelled his direct debit before the funds were taken. As BMW was aware of Mr R's intentions, it could also have stopped the payment from being collected.

So, I think the funds being debited from Mr R's account could have been avoided had BMW taken steps to communicate more effectively with him. That said, after Mr R made BMW aware of what had happened it correctly told him that he could contact his bank to reverse the payment – and it confirmed the same with his bank. Although this was around nine days after the funds were taken, Mr R also didn't realise what had happened or tell BMW. So, I think BMW took reasonable steps to put things right once aware of the problem.

I understand the funds took another month to be returned to Mr R. While this is unfortunate, I don't think this was due to any error or delay by BMW. Mr R has said his bank took a long time to process the refund – and incorrectly told him it wouldn't be processed at all. I can only consider BMW's actions here. If Mr R is unhappy with the actions of his bank he'd need to raise that as a separate matter with them. While I appreciate being without the funds for more than a month caused disruption to some works Mr R was carrying out to a rental property, I don't find BMW responsible for this delay. Nor have I seen enough evidence to persuade me that the works were delayed solely as a result of the funds being debited from Mr R's account. So I won't be telling BMW to reimburse Mr R for the rental payments he says he lost.

Some further confusion was caused later on. Because it had received the funds to settle the agreement, BMW sent Mr R a letter saying he no longer had any obligations under it. It appears Mr R sold the car after receiving that letter – on the basis that it was now his and nothing further was owed. BMW was aware that Mr R intended to reverse the payment and go ahead with the refinancing agreement – so it could have taken steps to avoid the confusion here, either by telling Mr R to ignore the letter or not sending it. At the same time, I think Mr R ought reasonably to have been aware that the matter wasn't settled and that the funds might be returned to him, as he'd asked for this to happen – so I think he could have contacted BMW or his bank to clarify the situation before selling the car.

The result was that – by the time the funds were returned – it was no longer possible to refinance the agreement as the car (and the security that would apply to any future agreement) was no longer in Mr R or BMW's possession. This left Mr R in a difficult situation, as he wasn't in a position to repay the funds. But I can't ignore the fact that Mr R has now received the final payment back as well as the proceeds from the car. Although there has been significant confusion, the fact remains that his original agreement with BMW now has an outstanding balance of nearly £14,000 – and Mr R needs to arrange to repay that balance. If Mr R isn't in a position to repay the funds in full, he needs to contact BMW to discuss a repayment arrangement. BMW says it's willing to discuss refinancing the balance as it originally agreed – and I'll leave it for Mr R and BMW to arrange this. I'd expect BMW to treat any refinancing application fairly – taking into account the relevant circumstances of this complaint.

BMW has agreed to remove the adverse information recorded on Mr R's credit file if a

refinancing application is agreed. It's separately told this service that it's not currently reporting any adverse markers on Mr R's credit file or a default. Given that Mr R has been waiting for BMW – and subsequently this service – to look into things I agree this is fair in the circumstances. If Mr R believes adverse information is still being recorded, he can let me know in response to this provisional decision and provide any evidence he has of this. If he hasn't already done so Mr R needs to contact BMW about repaying the balance to ensure no adverse information is recorded going forward.

It's clear the situation caused significant confusion, which could have been avoided had BMW communicated more effectively with Mr R or taken steps to prevent the payment from being taken. For the reasons I've explained, I don't think BMW is responsible for the rental payments Mr R says he lost. But Mr R now finds himself in a difficult position of having to repay a significant sum that he wasn't expecting to. This is in part due to BMW's handling of the situation – but could also have been avoided had Mr R not sold the car when he did. It's also not disputed that BMW took a long time to look into things after Mr R raised his concerns, causing further stress and frustration. Taking all of the circumstances into account, I think a compensation payment of £400 fairly reflects the impact of BMW's handling of the situation. So, I intend to say BMW should pay Mr R that amount – less any amounts already paid.

Mr R also says he incurred some overdraft fees as a result of the direct debit being taken. I think it's likely this wouldn't have happened had BMW communicated more effectively with Mr R. So, if Mr R can provide evidence of these fees – such as bank statements – I intend to say BMW should refund them. If Mr R would like to supply evidence of these costs he can send them to our Investigator in response to this provisional decision.”

Responses to my provisional decision

Mr R responded to my provisional decision and provided the following comments:

- During a call with BMW he was clearly told the finance agreement would continue while his refinancing application was in place – supporting his understanding that his application had been accepted.
- He acted in good faith based on the information BMW gave him, and its error caused him a direct financial loss of £4,200 in lost rental income. He previously provided evidence of his lost rental income, and wants to ensure this is taken into account.
- He wants to ensure that no adverse information is recorded on his credit file while the matter is ongoing.
- He's also referred to commission payments made to the supplying dealership that weren't disclosed at the point of sale. He believes the agreement was mis-sold.

BMW said it accepted my provisional decision. It clarified that – because Mr R no longer has the car – it can't offer a refinancing arrangement as it previously offered to. Instead, it said it would work with Mr R to reach a suitable payment arrangement.

I wrote to both parties letting them know that my final decision would reflect that BMW would contact Mr R regarding a payment arrangement – rather than a refinancing application. Neither party provided any further comments in response to this.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd like to thank both parties for responding to my provisional decision. I've considered their comments and have now reached a final decision on the matter.

As I've outlined, BMW has now clarified that it can't offer a refinancing arrangement as the car is no longer with Mr R. In the circumstances, I don't find that unreasonable. Instead, I'd expect BMW to contact Mr R to reach a suitable repayment arrangement. In doing so, BMW should pay due regard to Mr R's financial circumstances and ensure that any arrangement is affordable for him.

I've considered Mr R's comments regarding the call with BMW and the communication regarding the refinancing arrangement. But as I've already concluded that BMW made an error here and that it ought to have explained things more clearly to Mr R, my conclusions on this point remain the same as those outlined in my provisional decision.

Mr R has referred to his evidence of lost rental income. I'd like to assure Mr R that I took this evidence into account when reaching my provisional decision. And for the reasons explained in that decision I'm not persuaded that BMW's error caused a direct financial loss to Mr R. Overall while the initial error was made by BMW, I don't find it responsible for the delay in the funds being returned to Mr R. And while Mr R has provided evidence that a tenant wasn't able to move into the property because of the required works, I haven't seen enough to persuade me that the delay in those works being arranged was solely or mainly due to the situation with BMW. So, I can't fairly require BMW to reimburse Mr R for the costs he says he incurred in connection with his rental property.

Mr R has asked for reassurance that his credit file won't be impacted until the matter is resolved. BMW says it isn't currently reporting any adverse information – and I haven't seen anything to suggest otherwise. In any case, Mr R has been aware of the outstanding balance since – at the latest – February 2025, and I can't see that he's made any payments towards it since then. And the fact that the balance is outstanding is – in part – due to his decision to sell the car. So even if BMW had reported adverse information I wouldn't necessarily have required it to be removed.

Mr R and BMW now need to reach an arrangement for the outstanding balance to be paid. Any further reporting on Mr R's credit file will depend on the nature of that arrangement and whether the required payments are made. If Mr R has any concerns about information BMW records on his credit file in future, he'd need to raise that separately.

Finally, Mr R has referred to undisclosed payments between BMW and the dealership and says the agreement was mis-sold to him. This wasn't part of the complaint Mr R raised so isn't something I've considered here. If Mr R is unhappy with the sale of his agreement, he'd need to raise that with BMW directly in the first instance.

So, having considered Mr R's comments I've reached the same overall conclusions about the complaint as outlined in my provisional decision – for the same reasons.

My final decision

My final decision is that I uphold Mr R's complaint. I require BMW FINANCIAL SERVICES (GB) LIMITED to:

- Pay Mr R £400 compensation.
- On receipt of bank statements, reimburse any overdraft fees applied to Mr R's account between 2 December 2024 and 13 January 2025 as a result of the final payment being debited from his account. BMW should also apply 8% simple interest

to any refunded amounts – calculated from the date the charges were incurred to the date of settlement.

- Contact Mr R to discuss a suitable payment arrangement for the outstanding balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 December 2025.

Stephen Billings
Ombudsman